

Rejection of Claims Under 35 USC 112, Second Paragraph

The Examiner rejected Claims 8 and 9 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner specifically stated that:

There is no antecedent for "said one outer pocket". It appears that these claims should be dependent from claim 7.

Applicant agrees with the Examiner's comments. Therefore, Claims 8 and 9 have been amended to now properly depend from Claim 7 as suggested by the Examiner.

The Examiner rejected Claim 12 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner specifically stated that:

There is no antecedent for "the outer surface" or for "the exterior surface of the outer surface". It appears that "outer surface" should be changed to "outer member".

Applicant agrees with the Examiner's comments. Claim 12 has been amended to replace the word "surface" with the word --member-- such that the reference is now "the outer member" or "the exterior surface of the outer member" as suggested by the Examiner.

The Examiner rejected Claim 14 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner specifically stated that:

The use of the trademark, VELCRO, renders this claim indefinite because a trademark identifies the source of the goods, the characteristics of which may change over time, yet still be identified by the same trademark. Descriptive terminology must be substituted for VELCRO".

Applicant agrees with the Examiner's comments.. The specification at Page 7 beginning at line 7 and ending at line 17, was amended to delete "Velco fastener", and replace with the following descriptive terminology:

--VELCRO fastener, which is known in the art as a hook and loop fastener, namely, fasteners comprises of material having a surface of hooks mated with material having a surface of loops,--.

As such and using the above wording as an antecedent basis for the mark VELCRO, the word "Velcro" in claim 14 has been to

replaced with the descriptive terminology --a hook and loop-- such that the reference is now to a "a hook and loop fastener".

It is respectfully submitted that no new matter has been added by amending the specification at Page 7, Lines 7 through 17 as the mark VELCRO is well known to persons skilled in the art to mean "a hook and loop fastener, namely, fasteners comprises of material having a surface of hooks mated with material having a surface of loops.

With the above amendments to Claims 8, 9, 12 and 14, the rejections of these claims under 35 USC 112, second paragraph has been overcome.

Specification

The Specification has been amended at Page 7, Lines 3 through 17, as discussed above, to provide an antecedent basis for the descriptive terminology for VELCRO and as the same is used in Claim 14 thereby conforming the language in the Specification with the language used in Claim 14. Corrections were also made to pages 19 and 20 to replace the word "Velcro" with the word --VELCRO-- for proper trademark usage such that the reference is to a "VELCRO fastener".

Rejections of Claims Under 35 USC 102(b) and 103(a)

The Examiner has essentially rejected all of the claims, 1 through 20, based upon either Friedler (United States Patent 5,839,577), alone, or Eaton et al (United States Patent Des 375,626), alone, and/or based on the combination of Friedler in view of Eaton et al, Eaton et al in view of Reddy et al (United States Patent 5,927,581) and Eaton et al in view of Gilmore (United States Patent 1,914,087) or Friedler in view of Reddy et al.

The Examiner has relied upon Friedler by stating:

Any one of Friedler's spherical bags is in the shape of a baseball because a baseball is spherical. Further, Friedler's fastening member extends in a direction that is perpendicular to the handle. See Figures 1 and 2.

A careful review of Friedler discloses a bag for handling athletic articles which comprises an outer shell having an exterior surface an interior surface which encloses a separate inner lining. The outer shell is configured in the shape of an

athletic ball and includes a securable opening for inserting and removing articles from the inner lining which is connected to the interior surface through fasteners and which conform to the shape of an outer shell when it is positioned therein.

Friedler clearly teaches in the United States Patent 5,839,577 a bag having both an outer shell and an inner lining as stated in column 2, lines 19 through 30 which states as follows:

The interior surface of the outer shell and the exterior surface of the inner lining are provided with strips of fastening means, such as those fabricated from material marketed under the trademark Velcro®. When the inner lining is positioned within the outer shell, the strips of fastening means engage one another to secure the inner lining to the outer shell such that the inner lining may be easily removed by separating the fastening strips. As such, the inner lining may be replaced as

required. Inner lining is advantageously
fabricated from an absorbent material, such
as terry cloth, which is capable of
absorbing moisture from seat soaked clothes
placed within the gym bag. [Underlining
added for emphasis.]

Further Friedler discloses and teaches a rigid, fixed loop handle attached at each end to the exterior surface of the outer shell for carrying the ball by hand.

Further, Friedler does not disclose, suggest, teach or anticipate a carrying handle which is moveable and flexible and which is operatively connected in a predetermined position to the single outer member at a location other than the opening and wherein the carrying handle has an elongated strap and a loop member for forming a carrying handle wherein the connecting member interacts with the a cooperating connecting member resulting in a moveable handle.

Friedler does not disclose, suggest, teach or anticipate a bag for carrying a ball which includes a single outer member together with at least one outer pocket is positioned on and

protruding outwardly from the exterior surface of the outer member at a location other than the opening and having an entry way enabling the insertion and removal of an article from the outer pocket.

In addition, the Examiner is relying upon Eaton et al as showing an alleged "pocket" by stating as follows:

Regarding claim 14, Eaton's pocket appears to be closed by mating hook and loop elements.

Applicant respectfully disagrees with the Examiner's assumption that Eaton et al discloses a pocket.

Reproduced below is a copy of Fig. 1 of the present application and copies of Fig. 3 and Fig. 4 of Eaton et al Des 375,626.

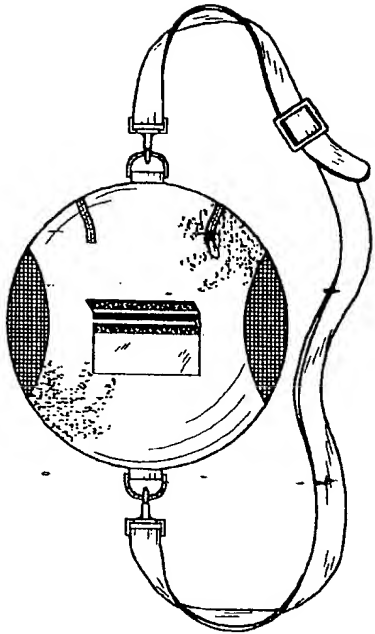
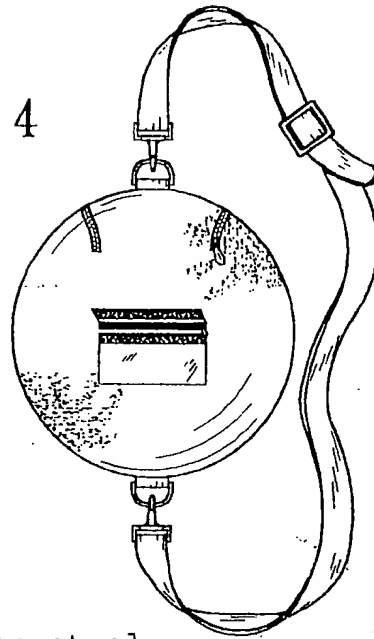


FIG. 3

FIG. 4



Figs. 3 and 4 of Eaton et al

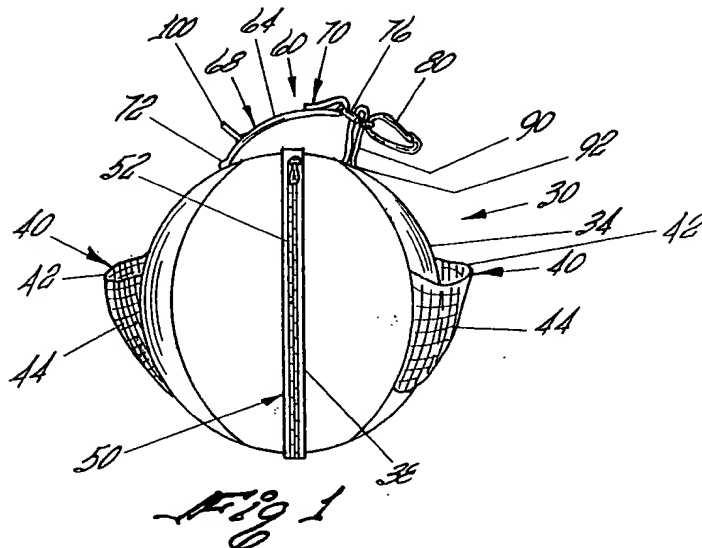


Fig. 1 of the Present Invention

The Examiner's attention is directed to the descriptions set forth in Eaton et al Des 375,626 with respect to Figs. 1 through 4 which state as follows:

Fig. 1 is a top plan view of a ball carrier showing the first embodiment of the design;

FIG. 2 is a top plan view of a ball carrier showing a second embodiment of the design, the sole difference being the omission of the transparent netting disposed in the front and rear portions of said carrier;

FIG. 3 is a bottom plan view of first said embodiment of the design;

FIG. 4 is a bottom plan of said second embodiment of the design;

Applicant respectfully points out to the Examiner that there is no discussion in Eaton et al with respect to Figs. 1 through 4 which discusses a so-called "pocket".

Therefore, the Examiner's conclusion that Figs. 3 and 4 discloses a pocket is not readily apparent from the description of the Figures or of the drawing Figs. 3 and 4.

Figs. 3 and 4 of Eaton et al are unclear as to whether the "square elements" is a pocket or an opening. It appears to Applicant that it is possible that the square elements shown in Figs. 3 and 4 are not pockets, per se, but are openings providing access to the interior of the ball bag and that the so called "flap" is a means for closing the opening.

If the Examiner's conclusion that the opening and flap contain a mating hook and loop elements is correct, then such a fastener would provide a means for the so called "flap" to cover and secure the opening.

On the other hand, and for purposes of argument, if it is determined that the "square shaped" elements are in fact pockets an interpretation with which Applicant would disagree for the reasons set forth above, it is very clear that such an alleged pocket does not protrude outwardly from the exterior surface in the manner as the at least one outer pocket protrudes as is shown in Fig. 1 of the present Application and as shown above.

Therefore, a combination of Friedler alone or Eaton et al alone or a combination of Friedler and Eaton et al clearly would not disclose, suggest, teach or anticipate a bag for carrying a

ball wherein the bag includes a single outer member having an opening for permitting insertion and removing of a ball from the single outer member, or a carrying handle having an elongated strap and a loop member which are moveable, or wherein the bag includes at least one outer pocket positioned on and protruding outwardly from the exterior surface of the outer member wherein the at least one outer pocket has an entry way enabling the insertion and removal of an article from the one outer pocket.

Accordingly, independent Claims 1 and 18 have been amended to sharply and clearly define the present invention over all of the cited art.

Claim 1 has been amended to specifically recite that the bag "includes a single outer member defining an exterior surface and configured in the shape of a ball and having an opening positioned therein for inserting and removing a ball from the single outer member".

In addition, Claim 1 has been amended to further define the handle to be a carrying handle as follows:

said carrying handle having an elongated strap having a first end and a second end, said first end being operatively connected to said exterior surface of said outer member, said second end terminating in a connecting member, and a loop member having a mounting end and cooperating connecting member, said mounting end being operatively mounted on the exterior surface and said cooperating connecting member interacting with said connecting member forming a carrying handle wherein said connecting member and said cooperating connecting member are moveable relative to each other;.

The structure of the carrying handle as claimed is shown in Figs. 1, 3, 4, 6, 8, 9, 10, 14, and 28 through 32.

For example, in Figs. 30, 31 and 32, the carrying handles 750, 770 and 790 each have an elongated strap having one end attached to the exterior surface and a second end terminating in

a connecting member in the form of a hooked shaped clasp. The loop member has a mounting end and cooperating connecting member in the form of a ring shaped member. The mounting end is operatively mounted on the exterior surface and the cooperating connecting member interacting with the connecting member forming a carrying handle wherein the connecting member and the cooperating connecting member are moveable relative to each other.

As shown in Fig. 1, the loop member may be in the form of a looped strap in lieu of a single strap terminating in a loop shaped member, such as for example a "D" ring shaped loop. The "loop member" term covers both structures.

In addition to including in Claim 18 the language used in Claim 1 to identify and define the single outer member, Claim 18 have been further amended to add the following language to define the at least one out of pocket as follows:

at least one outer of pocket positioned on
and protruding outwardly from the exterior
surface from said outer member at a location
other than the opening and having an

entryway enabling the insertion and removal
of an article from said outer pocket.

The above referenced language is essentially the claim
language of claim 7.

Claims 2 through 17 and claim 19 are being retained in the
Application as varying the scope of what is verily believed to
be an allowable independent claim.

Reddy et al discloses a convertible carrier in the form of
a primary bag having a configuration other than a shape of a
sport ball to be carried thereby and discloses a cylindrical
sack 30 which is affixed to side 14 of the primary bag 12 for
retaining a beverage container 100. Reddy et al discloses a
pocket 32 with a protective flap 34 which is located on the back
20 of the primary bag 12 for retaining personal effects such as
keys or wallet. (Reddy et al, column 4, line 6 through 10.)

Again, the pocket 32 with a protective flap 34 does not
protrude outwardly from the exterior surface in the manner as
depicted by the outwardly protruding pocket as disclosed and
claimed herein. The at least one outer pocket of the present
protrudes outwardly and provides sufficient volume to retain

personal property of larger size than keys or a wallet as taught by Reddy et al for the reasons set forth above.

For these reasons, claims 1 through 20, as amended, likewise defined patentable subject matter over Reddy et al alone or in combination with either Eaton et al or Friedler for the reasons set forth above.

New Claims 21 through 23

New claims 21 through 23 have been added by the Amendment. Independent Claim 21 is essentially a combination of claims 1 and 18. Claim 21, likewise is verily believed to define patent subject matter over all of the cited art for the reasons set forth above. Claims 22 and 23 are intended to vary the scope of the subject matter of independent claim 21.

For all of the above reasons, new claims 21 through 23 are verily believed to define patentable subject matter over the cited art.

Summary

For all of the reasons set forth above, the rejection of the Claims 1 through 20, as amended, under 35 U.S.C. 112, second paragraph, and under 35 U.S.C. 102(b) and 103(a) over the cited

art has been overcome. Further, the subject matter of new Claims 21 through 23 are likewise believed to define patentable subject matter for the reasons set forth above.

The Examiner is respectfully requested to issue a Notice of Allowability and a formal Notice of Allowance.

If the Examiner determines that allowable subject matter is present in this Application but has further objections to the claim language such that further modification to the claim language would overcome such objections of the Examiner, the Examiner is respectfully requested to call the undersigned for the purposes of conducting a phone interview so that agreement may be reached on wording acceptable to the Examiner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel J. Meaney, Jr.", with a checkmark to the right.

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)
FILED: March 17, 2000) EXAMINER
) STEPHEN P. GARBE
FOR: BAG FOR CARRYING A BALL)
)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

The Paragraph beginning at line 7 and ending at line 17 of Page 7 has been amended as follows:

Another advantage of the present invention is the opening formed in the outer member of the bag may include a fastening member, having an open and a closed position, which is operatively connected to the opening and adapted to make the opening an unsecured opening when the fastening member is in the open position and which is adapted to make the opening a secured opening when the fastening member is in a closed position. The fastening device may be any known fastening device such as for example, a zipper, buttons with cooperating button holes, snaps, mating members forming a [Velco] VELCRO fastener, which is known in the art as a hook and loop fastener, namely, fasteners comprises of material having a surface of hooks mated with material having a surface of loops, and the like.

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The Paragraph beginning at line 24 and ending at line 27 of Page 19 has been amended as follows:

Fig. 17 is a pictorial representation of another embodiment of an outer pocket 610 having a flap 612 integral with the entryway and having a fastening member 614 which is one of two mating elements defining a [Velcro] VELCRO fastener.

The Paragraph beginning at line 28 of Page 19 and ending at line 6 of Page 20 has been amended as follows:

Fig. 18 is a pictorial representation of a bag 600 having the outer pocket 610 illustrated in Fig. 17 operatively connected to the exterior surface of the outer member 600. A mating member 616 is operatively connected to the exterior surface of the outer member 600 and forms the other of two mating elements defining a [Velcro] VELCRO fastener. Fig. 19 is a pictorial representation of a bag of Fig. 18 having the fastening member 614 operatively connected to the mating member 616 placing the entryway in a closed position.

IN THE CLAIM

Claims 1, 8, 9, 12, 14, 18 and 19 have been amended as follows:

1. (Amended) A bag for carrying a ball [having an] wherein said bag includes a single outer member defining an exterior surface and configured in the shape of a ball and having an opening positioned therein for inserting and removing a ball [therefrom] from the single outer member, said bag comprising

a carrying handle operatively connected in a predetermined position to said single outer member at a location other than the opening, said carrying handle having an elongated strap having a first end and a second end, said first end being operatively connected to said exterior surface of said outer member, said second end terminating in a connecting member, and a loop member having a mounting end and cooperating connecting member, said mounting end being operatively mounted on the exterior surface and said cooperating connecting member interacting with said connecting member forming a carrying

handle wherein said connecting member and said cooperating connecting member are moveable relative to each other; and

a fastening member located within said opening and extending in a selected direction on said single outer member wherein at least a portion thereof extends in a direction substantially perpendicular to said carrying handle, said carrying handle being positioned to refrain from interfering with the inserting and removing of a ball from said single outer member defining the bag.

2. The bag of claim 1 wherein the configured shape of a ball is in the shape of a round ball.

3. The bag of claim 1 wherein the configured shape of a ball is in the shape of a basketball.

4. The bag of claim 1 wherein the configured shape of a ball is in the shape of a baseball.

5. The bag of claim 1 wherein the configured shape of a ball is in the shape of a soccer ball.

6. The bag of claim 1 wherein the configured shape of a ball is in the shape of a football.

7. The bag of claim 1 further comprising at least one outer pocket positioned on the exterior surface of said outer member at a location other than the opening and having an entryway enabling the insertion and removal of an article from said one outer pocket.

8. (Amended) The bag of claim [1] 7 wherein said one outer pocket is formed of a solid fabric.

9. (Amended) The bag of claim [1] 7 wherein said one outer pocket is formed of a mesh fabric.

10. The bag of claim 7 wherein said one outer pocket includes an interior cavity and said entryway communicates with and provides access to said interior cavity.

11. The bag of claim 7 wherein said entryway includes a zipper which has an open position and a closed position, said zipper when in an open position affording access to the interior cavity of said one outer pocket.

12. (Amended) The bag of claim 7 further comprising a flap operatively connected to at least one of said entryway and said exterior surface of the outer [surface] member, said flap having an open position and a closed position, said flap when in an open position affording access through said entryway to the interior cavity of said one outer pocket.

13. The bag of claim 7 wherein said outer pocket includes a second fastening member which cooperates with a mating member located on at least one of a flap and exterior surface of the outer member.

14. (Amended) The bag of claim 7 wherein said second fastening member and said mating member are mating elements defining a [Velcro] hook and loop fastener.

15. The bag of claim 7 wherein said second fastening member is at least one of a button and a button hole and said mating member is the other of said at least one of a button and a button hole.

16. The bag of claim 7 wherein said second fastening member is at least one of a rotatable fastener and an aperture for receiving a rotatable fastener and said mating member is the other of said at least one of a rotatable fastener and an aperture for receiving a rotatable fastener.

17. The bag of claim 9 wherein said mesh fabric is formed of an elastic material.

18. (Amended) A bag for holding a ball comprising
an outer member having an exterior surface configured in the shape of a ball and defining an inner enclosed space, said exterior surface including an opening formed therein in a selected direction and in communication with said inner enclosed space for affording the insertion and removal of ball therefrom;

a carrying handle having a first end and a second end operatively connected in a predetermined position to said outer member at a location other than the opening; [and]

a fastening member having an open and a closed position, said fastening member being operatively connected to said opening wherein at least a portion thereof extends in a direction substantially perpendicular to said first end and said

second [enod] end of the carrying handle and being adapted to make said opening an unsecured opening when said fastening member is in the open position and adapted to make said opening a secured opening when said fastening member is in a closed position; and

at least one outer pocket positioned on and protruding outwardly from the exterior surface of said outer member at a location other than the opening and having an entryway enabling the insertion and removal of an article from said one outer pocket.

19. (Amended) The bag of claim 18 having at least [one] two outer [pocket] pockets positioned on said exterior surface of the outer member and protruding outwardly at a location other than said opening and spaced from said carrying handle, said at least one outer pocket having an entryway enabling the insertion and removal of an article from said at least one outer pocket independent of a ball being located in said inner enclosed space.

20. The bag of claim 18 wherein said carrying handle is positioned at least substantially perpendicular to at least a portion of said opening.